

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. BARON

Appeal No. 2004-1517
Application No. 09/765,172

ON BRIEF

Before SMITH, FLEMING, and GROSS, ***Administrative Patent Judges.***
FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-17, all the claims pending in the instant application. Claims 18-20 have been canceled.

Invention

The invention relates to a switch platform for interacting with a display. See page 1 of Appellant's specification. Figure 5 is a plan view of the underside of another alternate embodiment of a navigable display according to Appellant's invention. See page 8 of Appellant's specification. Display 103 is preferably a

liquid crystal display. See page 9 of Appellant's specification. Display 103 is surrounded by its periphery by frame 104. See page 9 of Appellant's specification. Figure 5 depicts an embodiment making use of corner switches 201, 202, 203, and 205. The corner switches are disposed on the corners of the display itself. See page 12 of Appellant's specification. In the embodiment shown in Figure 5, display 103 is surrounded by frame 104. In this embodiment, frame 104 may be for aesthetic purposes or to protect the display during rocking. See page 12 of Appellant's specification.

Independent claim 1 present in the application is representative of Appellant's claimed invention and is reproduced as follows:

1. A display for use in controlling the execution of a functional device, said display comprising:

an electronic control system housed in association with said display, said electronic control system including a switch platform mounted to detect a touching about a periphery of said display and to provide a plurality of discrete output signals each indicative of a portion of said periphery at which said touching is detected.

References

The references relied on by the Examiner are as follows:

Goto et al. (Goto)	5,862,419	Jan. 19, 1999
Brisebois et al.	6,369,803	Apr. 9, 2002
(Brisebois)		(filed Jun. 12, 1998)

Rejections at Issue

Claims 1, 2, 5, 6, 8 and 10-12 stand rejected under 35 U.S.C. § 102 as being anticipated by Brisebois.

Claims 7, 9 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brisebois.

Claims 3, 4, 13-15 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brisebois in view of Goto.

Throughout our opinion, we will make reference to the briefs¹ and the answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellant and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1, 2, 5, 6, 8 and 10-12 under 35 U.S.C. § 102 and we reverse the Examiner's rejection of claims 3, 4, 7, 9 and 13-17 under 35 U.S.C. § 103.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136,

¹ Appellant filed an appeal brief on September 8, 2003. Appellant filed a reply brief on December 23, 2003. The Examiner mailed out an Office communication on January 15, 2004 stating that the reply brief has been entered into the record.

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138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Appellant argues that Brisebois fails to teach each and every limitation of the claimed invention. In particular, Appellant argues that Brisebois does not teach that the flexible input device is positioned on the display. See pages 4 and 5 of the brief. Appellant argues the Brisebois teaches that the active edge input device 120 is a user interface device positioned adjacent to display 110. Appellant agrees that Brisebois does teach that active edge input device 120 may actually touch display 110 or lay a predetermined distance away from an edge of the display 110 but Brisebois fails to teach to position a touch interface overlapping onto the display device. See page 2 of the reply brief.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant

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art." ***Texas Digital Sys., Inc. v. Telegenix Inc.***, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), ***cert. denied***, 538 U.S. 1058 (2003).

"Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." ***Tex. Digital Sys.***, 308 F.3d at 1204, 64 USPQ2d at 1819. ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); ***Id.*** (***citing Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." ***Tex. Digital Sys.***, 308 F.3d at 1204, 64 USPQ2d at 1819.

"Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Id.*

We note that Appellant's independent claim 1 recites "an electronic control system housed in association with said display, said electronic control system including a switch platform mounted to detect a touching about a periphery of said display." We note that the only other independent claim, claim 13, recites "a switch platform configured to provide signals to said controller for selecting said parameter values, said switch platform mounted to detect a touching about a periphery of said display." The question before us is whether this language requires that the touching is detected on the display. To answer this question, we must determine the scope of Appellant's language "periphery of said display."

Our dictionary provides two pertinent definitions. The first definition of periphery is (1) a boundary line, esp. that of a rounded figure; perimeter. Our dictionary provides another definition for periphery which is (2) surrounding space or area;

outer parts; environs or outskirts.² The first definition requires that the touching is on the display LCD itself, while the second definition requires that the touching may be detected on the outer parts of the display, such as the frame of the display. We return to Appellant's Figure 1 to explain the difference in scope of the two definitions. In the first definition, the touching would require being on the outer area of 103 as shown in Figure 1 whereas in the second definition, the touching is detected on the frame of the display 104.

We note that Appellant has disclosed two embodiments. The first embodiment is directed to a switch platform mounted to detect touching in the frame 104 shown in Figure 2. The second embodiment is directed to a switch platform mounted to detect touching in the outer boundaries of the display 103 shown in Figure 5.

Furthermore, Appellant states on page 10 of the specification that switches may be disposed at any operative location. Appellant further states preferably, four switches will be operatively disposed around the periphery of display 103 or frame 104. On page 12 of the specification, Appellant states

² Webster's New World Dictionary, Third Edition, 1988, page 105. Copy provided to Appellant.

that Figure 2 depicts an embodiment making use of four corner switches, wherein the corner switches are disposed on the corners of the frame surrounding the display. Appellant further disclose that Figure 5 depicts an embodiment making use of corner switches, wherein the corner switches are disposed on the corners of the display itself.

Thus, we find that the language, "touching about periphery of said display" found in Appellant's claims is directed in scope to only the embodiment shown in Figure 5 and does not include the embodiment shown in Figure 2. The specification makes clear that the area of touching for the embodiment shown in Figure 5 is the area of the display 104 whereas the area of touching in embodiment shown in Figure 2 is described as touching the frame 104. Furthermore, Appellant's arguments also have disavowed or disclaimed the scope of coverage of this language in their argument stating that the claim requires a touching of the display and not the frame of the display.

Having determined the scope of Appellant's claims, we find that Brisebois fails to teach detecting a touching of the display itself. Brisebois clearly teaches that the touching is detected by the use of the active edge input device 120 which is positioned adjacent to the display 110. See Brisebois, column 3,

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lines 47-57. Therefore, we fail to find that Brisebois teaches every element of Appellant's claims.

For the 103 rejection, we note that Brisebois fails to teach or suggest the above limitation as required by the independent claims. Furthermore, we fail to find that Goto provides the missing pieces as well. Therefore, we will not sustain the Examiner's rejection of these claims under 35 U.S.C. § 103 for the same reasons as above.

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In view of the foregoing, we have not sustained the Examiner's rejection of claims 1, 2, 5, 6, 8 and 10-12 under 35 U.S.C. § 102 nor have we sustained the Examiner's rejection of claims 3, 4, 7, 9 and 13-17 under 35 U.S.C. § 103.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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